

NATIONAL ASSOCIATION OF REALTORS®

EYE ON THE HILL

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“CAN THEY REALLY DO THAT?” SHOULD BANKS BE ENTREPRENEURS?

Even before Congress returned to Washington in late January to resolve leftover bills from 2005 and begin a new budget and appropriations cycle, NAR lobbyists were blanketing the Hill to draw Congressional attention to the latest bank forays into commercial endeavors. This “new” issue is all too familiar: Bank regulators have authorized several large, national banks to own a Ritz Carlton hotel, luxury condominiums and a windmill farm! NAR President Tom Stevens is leading a multi-front charge to assure that *Congress, not regulators*, determine what activities differentiate banking from commerce. (See box below.)

Take off your REALTOR® hat for a moment and put on your hat as a reasonably sophisticated and knowledgeable member of your community. Think for a moment about the bank where you keep your family’s account(s) and where you keep your business account(s). Just how much risk do you want that bank to take with your money and your neighbor’s money? A lot? Not very much? Do you want the bank to become, in effect, an entrepreneur and venture into uncharted territory? Or would you rather have the bank stick to its business as a lender and service provider? Should the bank be a *participant in or part owner* of the endeavors that it also finances? Should it get special tax breaks for those entrepreneurial adventures?

According to the Office of the Comptroller of the Currency (OCC), a national bank can, indeed, become an entrepreneur and have both a security interest for the debt and an ownership interest for real estate projects the bank undertakes. The OCC has recently ruled that *national banks can do the following*:

- Finance, develop and operate a luxury hotel next door to its facilities in a city. The bank claimed that out-of-town customers will “have a better experience” by staying at the bank-owned hotel.
- Finance, develop, operate and lease or sell space in a mixed use building. About one-half of the building will be used as office space (including some office space for the bank) and about a quarter as a hotel. Another quarter of the space will be condos that the bank will sell in the real estate marketplace.
- Finance, develop and hold a 70% *equity* stake in a windmill operation. The windmill will produce and sell alternative energy as electricity. Because the bank has a 70% equity position in the operation, it will qualify to receive special tax credits designed to provide incentives for the development of alternative energy sources.

Hotels? Condos? *Windmills*? Are these actually financial services “incident to banking”? Or are these banks now engaged in commercial businesses, with all the attendant risk, that are no different from Mega-Hotel, Inc., Big Condo Builder, Inc., or your local power company?

NAR believes that the OCC has simply gone too far in ruling that these are legitimate banking activities. From NAR's vantage point, these three rulings are wrong. We see these three endeavors – hotel development, mixed use development (leading to sales of residences) and alternative energy production as pure commerce. NAR President Tom Stevens has written to the Comptroller to express our strongly held view that the OCC's rulings are inconsistent not only with Federal statutes, but also with previous OCC rulings and OCC's own regulations. He is also seeking to have Treasury Secretary John Snow and Federal Reserve Chairman Ben Bernanke exclude banks from the real estate market.

NAR has also asked the Chairs and Ranking members of the House and Senate banking committees to hold oversight hearings on these three rulings so that *Congress*, not the OCC, can set the boundaries between banking and commerce. The importance of and urgency for this review is underscored by the fact that Wal-Mart, the world's largest retailer, has requested OCC authorization to establish a banking operation.

We are deeply concerned about the inherent risk in these activities. The development of a hotel and the sale of condos would appear to be commercial activities, as would the production and sale of electricity. We wonder whether these same banks would engage in these risky endeavors if they were required to undertake them *without* the benefit of tax credits or federal guarantees. In the case of the windmill farm, the U.S. taxpayer is essentially underwriting the risks twice: once by providing energy tax credits to an entity with no core competencies in energy production and a second time by means of the various federal guarantees that underwrite national banks. Are we witnessing another savings and loan crisis situation?

The OCC, by permitting banks to spread into various real estate development and even marketing activities, has raised the stakes in the "Banks in Real Estate" issue. NAR maintains its fervor about this issue because it is committed to the principle, first set out in the Civil War-era National Bank Act, that banking and commerce are separate and distinct and that there should always be firewalls between them.

The OCC's aggressive rulings pose a significant threat to the safety and soundness of the entire banking system and the financial system that supports the entire U.S. economy. In the 1980's, the combination of banking and commerce resulted in the savings and loan collapse and enormous challenges to housing markets. A similar intertwining of banking and commerce (particularly real estate) has kept Japan's economy in the doldrums for more than a decade. NAR is committed to assuring that the banking industry and the OCC cannot slowly, but surely, chip away at the real estate industry.

NAR, the OCC and Congress – The Game Plan to Date

1. NAR Lobbyists seeking investigative/oversight hearings about OCC rulings in the Financial Services, Energy and Commerce, Government Reform and Judiciary Committees.
2. Members of Congress are writing letters to the OCC to protest its aggressive rulings
3. Meetings are being arranged for President Tom Stevens to meet with Federal Reserve and Treasury officials, as well as Chairs and Ranking Members of the Committees shown above.
4. Tom Stevens has sent an "educational message" to all NAR members via the NARActionCenter.

NAR is planning an all-REALTOR® Call for Action, as well as fly-ins for designated Members of Congress. NAR is reaching out to other interested organizations to form a coalition to generate Congressional action.